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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR-00-0505-WHA
)	
Plaintiff,)	[PROPOSED] STIPULATED ORDER RE:
)	SPEEDY TRIAL ACT
v.)	
)	
CHARLES W. McCALL and JAY M.)	
LAPINE,)	
)	
Defendants.)	

WHEREAS, a second superseding indictment was unsealed in this matter on June 4, 2003;

WHEREAS, the Honorable Martin J. Jenkins previously held that this matter was so unusual or complex that it is unreasonable to expect adequate preparation for pretrial proceedings and for trial within the time limits set by the Speedy Trial Act, 18 U.S.C. § 3161, and that the ends of justice served by a continuance outweighed the best interest of the public and the defendants in a speedy trial pursuant to 18 U.S.C. § 3161(h)(8);

WHEREAS, trial in this matter began on September 11, 2006;

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1 WHEREAS, on November 3, 2006 the jury returned a verdict of not guilty as to the
2 defendants on Count 1 and the Court declared a mistrial as to Counts 2, 4, 5, 6, 7, and 8 of the
3 indictment and discharged the jury;

4 WHEREAS on November 8, 2006 the parties filed a Stipulation and [Proposed] Order
5 Setting Briefing Schedule for Defendants McCall's and Lapine's Renewed Motions for
6 Judgments of Acquittal Pursuant to Rule 29 in which the parties requested that, to accommodate
7 the professional schedules of counsel for the defendants, the defendants' Motions for Judgments
8 of Acquittal would be due on or before December 22, 2006;

9 WHEREAS on November 14, 2006 the Court entered an order granting the November 8,
10 2006 stipulation;

11 WHEREAS on December 15, 2006 the parties filed a Stipulation and [Proposed] Order
12 Modifying Briefing Schedule for Defendants McCall's and Lapine's Post-Trial Motions in which
13 the parties requested that, to accommodate the professional schedules of counsel for the
14 defendants, the defendants' Motions for Judgments of Acquittal would be due on or before
15 February 2, 2007;

16 WHEREAS on December 21, 2006 the Court entered an order granting the December 15,
17 2006 stipulation;

18 WHEREAS each defendant stipulates that he suffered no prejudice by the failure to
19 exclude time pursuant to the Speedy Trial Act between November 3, 2006 and February 2, 2007;

20 WHEREAS, on February 2, 2007 the defendants filed written motions for judgment of
21 acquittal on Counts 2, 4, 5, 6, 7, and 8, based on grounds of double jeopardy and collateral
22 estoppel, which motion was denied by order dated November 6, 2007;

23 WHEREAS, the defendants respectively filed timely notices of appeal from the
24 November 6, 2007 order on November 8, 2007 (Mr. Lapine) and November 14, 2007 (Mr.
25 McCall);

26 WHEREAS, on or about October 31, 2008 the Ninth Circuit Court of Appeals issued an
27 unpublished decision affirming the Court's November 6, 2007 order;

28 / / /

1 WHEREAS, on or about November 24, 2008, the Ninth Circuit issued its mandate with
2 respect to the appeal by Mr. McCall;

3 WHEREAS, on or about January 15, 2009, the Ninth Circuit issued its mandate with
4 respect to the appeal by Mr. Lapine;

5 WHEREAS, lead counsel for Mr. McCall is scheduled for trial in another matter
6 beginning March 2009;

7 WHEREAS, lead counsel for Mr. Lapine is scheduled for trial in another matter
8 beginning June 2009;

9 WHEREAS, the parties appeared for a status conference in this matter on January 20,
10 2009, at which time the Court set a trial date of October 26, 2009;

11 WHEREAS, the failure to grant a continuance of the trial date in this matter until October
12 26, 2009 would, given the complexity of this matter, taken as a whole, unreasonably deny the
13 parties continuity of counsel and would deny the parties the reasonable time necessary for
14 effective preparation, taking into account the exercise of due diligence; and,

15 WHEREAS, the ends of justice served by continuing the trial date until October 26, 2009
16 outweigh the best interest of the public and the defendants in a speedy trial;

17 THEREFORE, it is hereby stipulated by and between the parties, through their respective
18 counsel of record, that, pursuant to the Speedy Trial Act, time is excluded from January 20, 2009
19 until and including October 26, 2009. *See* 18 U.S.C. §§ 3161(e), (h)(8).

20 IT IS SO STIPULATED.

21
22 DATED: February 10, 2009

David Anderson,
Acting United States Attorney

24 /S/
Timothy P. Crudo
Assistant United States Attorney

1 DATED: February 10, 2009

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GARRISON LLP

3 /S/

Theodore V. Wells

5 DATED: February 10, 2009

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10 DATED: February 10, 2009

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12 /S/

Marcus S. Topel

14 Attorneys for Defendant
Jay M. Lapine

15 The Court finds that the failure to grant a continuance of the trial date in this matter until
16 October 26, 2009 would, given the complexity of this matter, taken as a whole, unreasonably
17 deny the parties continuity of counsel and would deny the parties the reasonable time necessary
18 for effective preparation, taking into account the exercise of due diligence. The Court further
19 finds that the ends of justice served by continuing the trial date until October 26, 2009 outweigh
20 the best interest of the public and the defendants in a speedy trial. Therefore, pursuant to the
21 Speedy Trial Act, time is excluded from January 20, 2009 until and including October 26, 2009.
22 See 18 U.S.C. §§ 3161(e), (h)(8).

24 **IT IS SO ORDERED.**

25 Dated: March 11, 2009

